Amendments to the Drawings

Figure 2G has been amended to add reference numeral 32 to be consistent with the description in the specification. Figure 4A has been amended to add lead lines to reference numerals 91 and 92. Figure 4C has been amended to remove the extra center line that was mistakenly added in the previously amended figure. Figure 4G has been amended to switch the reference numerals 202 and 203 to be consistent with the description in the specification.

Attachment: Replacement Sheets

REMARKS

Claims 14-24 are currently pending. Claims 1-13 were previously cancelled. Claim 14 is currently amended and support can be found, for example, in the specification at paragraph [0014], [0018] and [0028], and in the Figures. Claims 15 and 16 are currently amended to provide proper antecedent basis. New claims 19-22 are added and support can be found, for example, in Fig. 3F and 3G. New claim 23 is added and support can be found, for example, in the specification at paragraphs [0018] and [0028]. The specification has been amended to correct minor grammatical/typographical errors and to make the numbering consistent with the drawings. No new matter is added.

Examiner Interview

Applicants thank Examiner Sigler and Supervisory Examiner Barrett for the personal interview conducted on June 2, 2009 with Jocelyn D. Ram (54,898). In this interview, the Examiners agreed that the amendments herein to claim 14 would overcome the rejections of record.

Rejection under 35 USC 102

Claim 14 is rejected under 35 USC 102(b) as being alleged anticipated by US Patent No. 5,466,262 to Saffran ("Saffran"). Applicants respectfully traverse. Saffran describes a method of stabilizing a comminuted fracture using a two-layer malleable stabilization device. Saffran describes that the surgeon selects the size of the sheet, wraps the sheet around the fracture, and then affixes the sheet to the tissue using staples (col 7, lines 8-28).

Saffran fails to disclose a method of securing two sections of a transverse bone fracture or an osteotomy together. Rather, Saffran is directed to securing a shattered comminuted fracture and delivering a medicine into the space between the fragments. In the background section, Saffran differentiates his invention from prior devices used for "simple transverse fractures" (col 1, lines 27, 60). Thus, Saffran is not designed to be used on a transverse fracture.

Furthermore, Saffran also fails to disclose "locking the first end of the band to a first surface of a bone" *before* the wrapping step. Saffran wraps the device around the fractured bone and then attaches the sheet by staples. Saffran also fails to disclose "stretching the band to

secure the two sections of the bone" together. Furthermore, it would not be obvious to modify Saffran to be stretchable as this may allow for undesirable movement of the shattered bone fragments, which could impede healing. For at least the above reasons, Applicants respectfully request withdrawal of this rejection.

Rejection under 35 USC 103

Claims 14-17 are rejected under 35 USC 103(a) as being allegedly rendered obvious by US Patent No. 7,112,221 to Harris ("Harris") in view of US Publication No. 2002/0120270 to Trieu et al. ("Trieu").

Neither Harris nor Trieu describe or suggest a method to secure two sections of a transverse bone fracture or an osteotomy together. Harris describes a prosthetic implant for replacing a flexor tendon pulley in the hand of a patient. Trieu describes a spinal stabilization device comprising a flexible implant to fuse adjacent vertebrae.

The Examiner admits that Harris fails to disclose using bioabsorbable materials and attempts to use Trieu to cure this deficiency. However, it would go against the teaching of Harris to use bioabsorbable materials for a prosthetic device. Harris' device is a prosthetic implant either to replace the pulley in the patient's hand or "a cerclage strap for the treatment of a fracture of the shaft of a metacarpal bone or phalanx" (col 2, lines 22-23). Both embodiments are described as a prosthetic implant, thus it can be assumed they are intended to be permanent, since a temporary prosthesis would require a further invasive surgery to implant a new prosthetic device.

Neither Harris or Trieu disclose the step of "stretching the band to secure the two sections of the bone" together. In fact, Trieu teaches that implant can have "a substantially flexible yet substantially inelastic body (paragraph [0006]). Thus, if the resorbable material of Trieu were used in the device of Harris, which is not conceded, the strap would not be elastic.

Furthermore, Harris fails to disclose "locking the first end of the band to a first surface of a bone" *before* the wrapping step. Harris wraps the device around the fractured bone and then attaches the two ends of the prosthesis to each other. Although Harris describes creating a bore 64 in the strap and inserting plug 65 through the bore after the strap is wrapped, there is no disclosure of attaching the strap to the bone before it is wrapped. The Examiner attempts to use

Trieu to cure this deficiency. Trieu does describe tensioning the implant 30, but the implant does not wrap around a bone, rather it connects two adjacent bones and is substantially planar (Fig. 1). In a planar device designed to connect two parts, the second end would need to be connected to the second part to achieve the desired connection and prevent the second end from moving freely. However, when a band encircles the bone, the second end is already connected to the first end, thus a second connection to the bone is not necessary. Therefore, there is no teaching, suggestion, or motivation in Trieu to provide a second attachment point in Harris' device.

Furthermore, there is no motivation to combine Harris with Trieu as they are directed to different devices and different methods. Trieu describes a spinal stabilization device comprising a flexible implant 30 having two anchors 32a, 32b meant to fuse two vertebrae and prevent relative movement thereof. Conversely, Harris is meant to hold the flexor tendons 8, 9 in alignment close to the metacarpal bone 21, but allow the tendons to slide freely within the hook 28. Furthermore, the implant 30 of Trieu does not wrap around a bone, but rather connects two adjacent bone, and is substantially planar (Fig. 1). Conversely, Harris' strap fully encircles the metatarsal bone. In view of all these and other differences, one of ordinary skill in the art would not look to Trieu for any teaching for modifying Harris.

Thus, Harris and Trieu do not disclose, teach, or suggest all the limitations of claim 14, and all claims dependent therefrom, and Applicants respectfully request withdrawal of this rejection.

Claim 18 is rejected under 35 USC 103(a) as allegedly obvious over Harris in view of Trieu in further view of US Patent No. 5,423,821 to Pasque ("Pasque"). As discussed above, Harris and Trieu do not disclose all the limitations of claim 14, from which claim 18 depends. Pasque cannot cure these deficiencies. Pasque describes a compressible suture material for use in closing the sternum. The sutures 20 of Pasque are wound around the sternum as shown in Fig. 11, and then connected by fastener device 30, which has prongs 50 that are secured to peristernal tissue. Although the sutures encircle the bone, neither the sutures 20 nor the fastener device 30 are actually connected to the bone. Thus, Harris, Trieu and Pasque do not disclose, teach, or suggest all the limitations of claim 18, and Applicants respectfully request withdrawal of this rejection.

Conclusion

Although no fees are believed to be due, the Office may charge any additional fees required, or credit any overpayments, to Deposit Account No. 11-0600.

The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter regarding this application.

Respectfully submitted,

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